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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GIBSON GUITAR CORP., a)	Case No. CV 12-10870 DDP (AJWx)
Delaware corporation,)	
)	ORDER DENYING MOTION FOR
Plaintiff,)	CERTIFICATION
)	
v.)	[Dkt. No. 48]
)	
VIACOM INTERNATIONAL INC., a)	
Delaware corporation; JOHN)	
HORNBY SKEWES & CO., LTD., a)	
United Kingdom corporation,)	
)	
Defendants.)	
_____)	

Presently before the court is Plaintiff Gibson Guitar Corp. ("Gibson")'s Motion for Certification under F.R.C.P. 54(B) of the Court's May 17, 2013 Order. Having considered the parties' submissions, the court DENIES the Motion.

In the court's May 17, 2013, Order, the court granted Defendant Viacom International Inc. ("Viacom")'s motion to dismiss Gibson's first amended complaint ("FAC"). The FAC alleged that John Hornby Skewes & Co., LTD ("JHS") infringed on Gibson's FLYING V trademarks through the SpongeBob SquarePants Flying V Ukulele, and that Viacom, owner of the SpongeBob trademarks, was vicariously

1 and contributorily liable. The court dismissed Viacom as a
2 defendant. At the time of this Order, JHS remains a defendant and
3 has not yet answered the FAC.

4 Gibson moves for certification of the order dismissing Viacom.
5 Rule 54(b) provides, in relevant part:

6 When more than one claim for relief is presented in an
7 action . . . or when multiple parties are involved, the
8 court may direct the entry of a final judgment as to one
9 or more but fewer than all of the claims or parties only
upon an express determination that there is no just
reason for delay and upon an express determination for
the entry of judgment.

10 Fed. R. Civ. P. 54(b). "A district court must first determine that
11 it is dealing with a 'final judgment,'" and then "whether there is
12 any just reason for delay." Curtiss-Wright Corp. v. General Elec.
13 Co., 446 U.S. 1, 7-8 (1980). "Not all final judgments on
14 individual claims should be immediately appealable, even if they
15 are in some sense separable from the remaining unresolved claims."
16 Id. at 8. "Judgments under Rule 54(b) must be reserved for the
17 unusual case in which the costs and risks of multiplying the number
18 of proceedings and of overcrowding the appellate docket are
19 outbalanced by pressing needs of the litigants for an early and
20 separate judgment as to some claims or parties." Morrison-Knudsen
21 Co., Inc. v. Archer, 655 F.2d 962, 965 (9th Cir. 1981).

22 The parties agree that the court's judgment dismissing Viacom
23 is a final judgment in the sense of Rule 54(b). The issue is
24 whether there is any just reason for delay. Viacom argues that
25 certification of an appeal would waste judicial resources.
26 Gibson's claims against Viacom are for vicarious infringement and
27 contributory liability. If the remaining defendant JHS is not
28 found to be a direct infringer, then the issue of Viacom's

1 secondary liability is moot. For this reason, Viacom argues, it
2 would be more efficient to obtain a determination on that claim
3 before allowing an appeal as to Viacom's liability.

4 Gibson argues that it would be prejudiced if it must wait
5 until after the JHS trial on direct infringement because it will be
6 unable to pursue discovery and a trial against Viacom without
7 certification. It also expresses concern that if JHS were found to
8 be a direct infringer, and if Viacom were later found to be
9 vicariously or contributorily liable, there would have to be a new
10 trial on the merits of the direct infringement claim because Viacom
11 would not have been a party to that action and collateral estoppel
12 would not apply.

13 Despite these concerns, the court finds that this is not a
14 case where equity or efficiency require the certification of an
15 appeal. Gibson has not convinced the court that the dismissal of
16 Viacom was a close call. Additionally, for an appellate reversal
17 to have any impact on the action, JHS would have to be found to be
18 a direct infringer. For these reasons, the court finds that
19 certification is not appropriate and DENIES the motion.

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21 IT IS SO ORDERED.

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24 Dated: August 6, 2013

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DEAN D. PREGERSON
United States District Judge